

REMARKS

In response to the final Office Action dated December 10, 2008, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-33 are pending in this application.

Rejections under § 101

The Office rejected claims 1-10 under 35 U.S.C. § 101 for allegedly claiming non-statutory subject matter. Independent claim 1 has been amended and is believed to fully comply with recent case law.

Rejection of Claims under § 103 (a)

The Office rejected claims 1-33 under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent 6,526,581 to Edson in view of U.S. Patent Application Publication 2004/0233900 to Andersen, *et al.*

The proposed combination of *Edson* and *Andersen*, though, teaches away and cannot support a *prima facie* case for obviousness. The M.P.E.P. expressly explains several situations in which a reference teaches away, including when a proposed modification “render[s] the prior art unsatisfactory for its intended purpose” or when the proposed modification “change[s] the principle of operation of a reference.” See M.P.E.P. § 2145 (X)(D). If *Edson* is combined with *Andersen*, then *Edson*’s entire teaching of interface cards must be **eliminated** to use *Andersen*’s frequency division multiplexing scheme. Conversely, *Andersen*’s entire teaching of frequency division multiplexing must be **eliminated** to use *Edson*’s interface cards. The patent laws, however, forbid changing a principle of operation to support a *prima facie* case. Because these changes are not permissible, any proposed combination of *Edson* and *Andersen* cannot support a

prima facie case. The Office is thus respectfully requested remove the § 103 (a) rejections of the pending claims.

Edson's principle of operation uses interface cards to provide interfaces between a gateway and home devices. See U.S. Patent 6,526,581 to Edson at column 3, lines 25-30 and at column 4, lines 20-35. "[E]ach device connects to one of the physical in-home media through a device interface D." *Id.* at column 7, lines 58-60. The gateway includes interface cards to internal, in-home networks, such as HPNA, powerline, wireless, and Ethernet networks. See *id.* at column 10, lines 45-60. Each interface card provides a two-way conversion. See *id.* at column 10, lines 57-59. The gateway's processor automatically detects each device and selects the appropriate interface. See *id.* at column 11, lines 10-20.

Andersen's principle of operation, in contradistinction, uses frequency division multiplexing to connect computers to a server. See U.S. Patent Application Publication 2004/0233900 to Andersen, *et al.* at paragraph [0048]. A voice channel is frequency division multiplexed with a video channel onto the same wire. See *id.* at [0047] and [0048]. *Andersen's* "home/small business model" even illustrates modulator and demodulator circuitry that demodulates cable television signals into "computer data, video conferencing data and TV signals." See *id.* at [0066].

The proposed combination of *Edson* and *Andersen*, then, teaches away and cannot support a *prima facie* case for obviousness. If *Edson* is combined with *Andersen*, then *Edson's* entire teaching of interface cards must be **eliminated** to use *Andersen's* frequency division multiplexing scheme. Conversely, *Andersen's* entire teaching of frequency division multiplexing must be **eliminated** to use *Edson's* interface cards. Because the patent laws forbid changing a principle of operation to support a *prima facie* case, any proposed combination of *Edson* and *Andersen* cannot support a *prima facie* case. The Office is thus respectfully requested remove the § 103 (a) rejections of the pending claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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